



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH

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June 14, 2006

TO: Washington State Board of Health Members

FROM: Ed Gray, MD, SBOH Member

**SUBJECT: EMERGENCY HIV REPORTING RULES CONTINUATION:
CHAPTER 246-101 WAC**

Background and Summary

In the immediately preceding public hearing, the Board will have considered a proposal to adopt a permanent rule about maintaining the names of asymptomatic HIV-infected cases. If that rule proposal is adopted by the Board today, it cannot go into effect until at least 31 days after filing a CR-103 for the permanent rule. Even if the CR-103 for the permanent rule could be filed tomorrow, and preparation of the CR-103 and accompanying documents can take a significant amount of work, the permanent rule would not go into effect until July 16, 2006.

The Board adopted an emergency rule on March 8 to allow the Department of Health (DOH) to retain names of asymptomatic HIV-infected cases and re-determine the names previously converted to code. Emergency rules are in effect a maximum of 120 days, and this one expires July 6, 2006. Before the Board adopted the emergency rule, DOH and local health jurisdictions were required to convert names of asymptomatic cases to code after 90 days. Beginning in Federal Fiscal Year 2007, to get full federal funding, states must maintain the names, not coded identifiers, for cases of HIV infection that are reported to CDC. Unless the emergency rule is readopted by the Board, DOH will lose authority to retain names of asymptomatic HIV-infected individuals between July 6 and the permanent rule effective date.

This could cause a significant workload increase for DOH and local health jurisdictions to convert names to code and to re-determine names when the permanent rule becomes effective. It might also cause loss of some federal funding under the Ryan White Care Act for support services to infected individuals. Preventing the loss of federal funding is a "good cause" under RCW 34.05.350(1)(b), which allows a state agency to adopt an emergency rule, with or without a public hearing. The law also allows re-adoption of an emergency rule if "the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking procedures to adopt the rule as a permanent rule."

John Peppert, Director of the Office of Infectious Disease and Reproductive Health, is here to request re-adoption of the emergency rule for asymptomatic HIV-infected case name retention that the Board adopted on March 8, 2006. Material behind Tab 10 in members' packets contains a proposed CR-103 for the Board's consideration.

Board Action Recommended

I recommend that the Board consider the following motions:

- 1. The Board finds that rules existing before March 8, 2006 prohibit the Department of Health keeping records with the names of HIV-infected individuals more than 90 days. These rules threaten the loss of federal funding to state and local health services in Washington. This constitutes an emergency situation for rule making under RCW 34.05.350(1)(b).*
- 2. The Board directs its executive director to continue the emergency rule regarding WAC 246-101-520 and WAC 246-101-635 that was adopted by the Board on March 8, 2006 to be effective until a permanent Board rule on these sections becomes effective.*